

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OBIE BANAWIS-OLILA,
Plaintiff,

v.

WORLD COURIER GROUND, INC., et al.,
Defendants.

Case No. 16-cv-00982-PJH (KAW)

**ORDER DENYING MOTION TO
COMPEL**

Re: Dkt. Nos. 46, 50

On October 31, 2016, Defendant World Courier Ground, Inc. filed a motion to compel discovery from non-party Bicol Express, Inc. ("Bicol"), a suspended corporation. (Def.'s Mot., Dkt. No. 46.) Defendant also filed a discovery letter on the same matter. (Def.'s Discovery Letter, Dkt. No. 50.) Defendant seeks information related to Plaintiff Obie Banawai-Olila's employment relationship with Bicol, her payment history from Bicol, Bicol's organizational structure, and Bicol's business records, including transportation records for services performed for Defendant. (*Id.* at 3.) For the reasons stated below, Defendant's motions are DENIED.

I. BACKGROUND

Plaintiff was employed by Defendant until September 28, 2015, when her employment was allegedly terminated. (Second Amended Compl. ("SAC") ¶ 1, Dkt. No. 39.) Following her termination, Plaintiff filed the instant lawsuit, alleging violation of the California Equal Pay Act, failure to provide breaks and meal periods, failure to pay overtime, violation of the California Unfair Competition Law ("UCL"), and waiting time penalties.

Defendant in turn filed counterclaims against Plaintiff, alleging that Plaintiff resigned after she made material misrepresentations during a company investigation into a missing package. (Counterclaims ¶ 6, Dkt. No. 40.) While employed by Defendant, Plaintiff owned and managed

1 Bicol, a trucking company that was also one of Defendant's third party delivery vendors.
2 (Counterclaims ¶ 8.) Defendant alleges that Plaintiff would use its time and resources to conduct
3 work for Bicol, and would overcharge Defendant's customers when Bicol was performing delivery
4 services. (Counterclaims ¶¶ 11, 12.) In August 2015, Plaintiff informed Defendant that a highly
5 sensitive, military package had gone missing while being transported by Bicol. (Counterclaims ¶
6 22.) During the investigation, Plaintiff gave contradicting stories of what had occurred to the
7 package. On September 24, 2015, Defendant discovered that Bicol was operating without
8 required licenses, and terminated Bicol as a vendor. (Counterclaims ¶ 26.) On September 28,
9 2015, Plaintiff abruptly resigned, while her husband, Patricio F. Olila, "apparently fled the country
10 to the Philippines." (Counterclaims ¶ 28.)

11 On September 21, 2016, Defendant issued two subpoenas to Bicol. (Donelan Decl. ¶ 3,
12 Dkt. No. 46-1.) At this time, Bicol's agent for service of process was Mr. Olila. (Donelan Decl.,
13 Exh. D; Counterclaims at 4 n.1.) Defendant served the subpoenas at the address listed as the
14 entity address and agent address. (Donelan Decl., Exhs. D, E.) The subpoenas were not served on
15 Mr. Olila, however, but on a "Jane Doe," who is described as being between the age of 18 and 21.
16 (Donelan Decl., Exh. E.)

17 No objections were filed to the subpoena, and Bicol failed to produce documents or appear
18 for its deposition. (Donelan Decl. ¶ 8.) On October 31, 2016, Defendant filed a motion to compel
19 discovery. The case was then referred to the undersigned for discovery purposes. (Dkt. No. 47.)

20 On November 4, 2016, Defendant filed a discovery letter, explaining that it was unable to
21 meet and confer with Bicol due to Bicol's failure to respond, and requesting that the Court grant
22 the motion to compel. (Def.'s Discovery Letter at 1.) On November 14, 2016, Plaintiff filed Mr.
23 Olila's declaration, stating that he had not been served any documents relating to the motion to
24 compel discovery, and that he has not resided at the address listed on the California Secretary of
25 State's website since October 25, 2015. (Olila Decl. ¶¶ 1, 3, Dkt. No. 51.) On November 16,
26 2016, Defendant filed its reply. (Def.'s Reply, Dkt. No. 52.)

27 II. DISCUSSION

28 "Under Federal Rule of Civil Procedure 4(h) and 45(b), a subpoena directed to a

corporation or unincorporated association may be served by delivering a copy to an officer, managing agent, general agent, or any other agent authorized by appointment or by law, and mailing a copy to the defendant." *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, No. C-04-3955 SC (JCS), 2009 WL 428550, at *2 (N.D. Cal. Nov. 24, 2009). Further, Federal Rule of Civil Procedure 4(h) "authorizes services on individuals in any manner approved under state law, including those individuals who may be served on behalf of corporations and unincorporated associations." *Id.*; see also *Houston Cas. Co. v. Int'l Grand Tours, Inc.*, No. C-07-1188 RMW, 2008 U.S. Dist. LEXIS 117207, at *13 (N.D. Cal. Oct. 22, 2008) (when serving subpoena on corporation pursuant to Rule 4(h)(1)(A), "California law requires that service on a corporation be delivered to a designated agent or officer of the corporation").

In the instant case, Bicol is a suspended corporation. (*See* Donelan Decl., Exh. D.) A suspended corporation "may be validly served under the authority of [California Code of Civil Procedure] section 416.10, subdivision (b)." *Gibble v. Car-Lene Research, Inc.*, 67 Cal. App. 4th 295, 308 (1998). Per Section 416.10(b), service on a corporation may be completed by delivering a copy "[t]o the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process." See also *NGV Gaming, Ltd.*, 2009 WL 4258550, at *2.


Here, Defendant served the subpoenas at the address listed on the Secretary of State's website. Defendant did not, however, serve Bicol's agent of process, who has not resided at the address listed since October 2015. (Olila Decl. ¶ 2.) Instead, Defendant served a "Jane Doe," but it is unknown if this person has any connection to Bicol, let alone whether this individual is authorized to receive service on behalf of Bicol. (*See* Donelan Decl., Exh. E.) Thus, the Court finds that Defendant's service of the subpoenas is inadequate, and DENIES Defendants' discovery motions.

Defendant must properly serve Bicol with the subpoena, whether by serving the agent of process (Mr. Olila) or, for example, by personally serving the subpoena on Plaintiff, who is

1 apparently Bicol's Chief Financial officer.¹ (Def.'s Reply at 3.)

2 IT IS SO ORDERED.

3 Dated: December 9, 2016

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KANDIS A. WESTMORE
United States Magistrate Judge

United States District Court
Northern District of California

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27 ¹ Although notice of the subpoena was issued on Plaintiff's attorneys, *see* Donelan Decl., Exh. C,
28 "courts have long held that service on an attorney is not sufficient to compel production or
documents or presence at a deposition." *Fujikura Ltd. v. Finisar Corp.*, No. 5:15-mc-80110-HRL
(JSC), 2015 WL 5782351, at *6 (N.D. Cal. Oct. 8, 2015).